

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

15 Cr. 867 (RMB)

6 REZA ZARRAB,

7 Defendant.  
-----x

8 New York, N.Y.  
9 December 1, 2016  
10 11:00 a.m.

12 Before:

13 HON. RICHARD M. BERMAN,

14 District Judge

15 TELEPHONIC APPEARANCES

16 PREET BHARARA

17 United States Attorney for the  
Southern District of New York

SIDHARDHA KAMARAJU

MICHAEL LOCKARD

DAVID DENTON

18 Assistant United States Attorney

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19 20 Attorneys for Defendant

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1                   THE COURT: Counsel, hi. It's Judge Berman. Are you  
2 there?

3                   MR. BRAFMAN: Good morning, sir. We have Ben Brafman  
4 and Josh Kirshner on behalf of Mr. Zarbab, and I waive his  
5 appearance for the conference call, Judge.

6                   THE COURT: Thank you.

7                   MR. KAMARAJU: Good morning, your Honor. Sid  
8 Kamaraju, Michael Lockard and David Denton for the government.

9                   THE COURT: Thank you. I appreciate your taking the  
10 time.

11                  With respect to, and trying to be as accommodating as  
12 I can, I may well have misspoke yesterday about the  
13 availability of October 16, 2017 as a trial date. It may turn  
14 out that that -- and I'll explain the reasons why -- is just  
15 not doable for me. I'm not doing this lightly, as you can  
16 appreciate. I did two things before initiating this phone  
17 call. One is that I reviewed the merits of the addition of the  
18 additional defendant, which I know is not entirely  
19 determinative in your request, particularly Mr. Brafman's, to  
20 go to October, there were other aspects of that request, as  
21 well, which I'm not aware in detail, but it was very clear that  
22 you had other issues from our conversation yesterday in court.

23                  If there were no other issues, it strikes me that an  
24 adjournment is nevertheless warranted because you've asked for,  
25 one, for preparation, and in the normal course, that would be

1 at the outside a four-month or so adjournment. The part that  
2 is most problematic to me is my docket, which I did not  
3 adequately take into account. I do have one or two other cases  
4 that may require that time slot of October, certainly around  
5 that time, and those are cases which, whenever they are able to  
6 be tried, do need to be tried. What I do not want to do is be  
7 in a position of putting off Mr. Zarrab's case beyond that  
8 other case, and if that other case takes that time slot, that  
9 pushes Zarrab into almost 2018. That is not acceptable, I  
10 don't think.

11

12 MR. BRAFMAN: May I make a suggestion?

13 THE COURT: I was going to make a suggestion. I would  
14 like you to do two things, if you can. The first is to meet  
15 and confer among yourselves -- and of course, obviously, you'll  
16 talk to Mr. Zarrab -- and see if there is not some way -- not  
17 set in stone today, and I'm not asking you to do that -- but  
18 see if there is some way where you could put together a trial  
19 time in the May/June, 2016 timeframe, if that becomes  
20 necessary. If necessary, that would have to be my call, and  
21 that would be only a matter of my docket and my other cases.  
22 So in terms of preparation, I know you could be ready in that  
23 time. I don't know the details of your other commitments and  
24 obligations, that would be the second request I would make if  
25 the meet and confer doesn't get us anywhere, which is to

1 indicate to me in the letter perhaps, and it can be  
2 confidential, the specifics of your other commitments for that  
3 time period starting in May/June and going into later in the  
4 year. That's my suggestion and request of you.

5 Go ahead, Ben.

6 MR. BRAFMAN: Judge, I'm happy to talk to the  
7 government about it, but I could tell you now, sir, and I want  
8 to make it clear to the Court that the request was not only the  
9 preparation, I could certainly be ready by May if we had to,  
10 but I have a trial commitment in June that was set more than  
11 six months ago with the understanding that it was a firm date.  
12 I am under the direction of Judge Matsumoto not to take any  
13 cases that would conflict. It's a case that involves a number  
14 of different privilege issues, because there's a codefendant  
15 who is a partner in a law firm. The Court has set hearings for  
16 pretrial that are very complicated, and I'd be happy to discuss  
17 if it's necessary.

18 The other factor that I have is completely personal  
19 but involves the bar mitzvah of a grandson in Israel. That's  
20 been set for a long time, and it would be very, very difficult  
21 for me not to be able to make that trip, and I hope your Honor  
22 would not put me in a position where I needed to miss that  
23 event.

24 May I suggest, I'm going to see Mr. Zarbab later  
25 today, if I can get into the MCC, and I will discuss this with

1 him. My question is, perhaps, everything subject to change in  
2 all of our lives when people decide to plead guilty or get  
3 adjournments and things free up -- I've been doing this now for  
4 a long time and nothing is ever carved in stone and sometimes,  
5 even if it is, things change that we don't anticipate. I do  
6 not believe my trial commitment in June will change. I think  
7 the defendant is intent on proceeding to trial, and we're  
8 working towards that date. And I don't believe that I can miss  
9 the bar mitzvah of a grandson, if I can avoid it.

10 I'm happy to -- perhaps we keep the October date for  
11 now, we revisit it maybe after the holidays in December and see  
12 if anything has changed with respect to the other cases that  
13 involve your Honor.

14 THE COURT: Well, by the way, the case in the Eastern  
15 District, that's a criminal case or a civil case?

16 MR. BRAFMAN: It's a criminal case, and it involves a  
17 high -- unfortunately, a case that's attracted a lot of media  
18 attention. It's United States versus Martin Shkreli, and his  
19 codefendant is a partner in a large firm. So I've tried a lot  
20 of complicated case in my life, but none that have so many  
21 evidentiary issues that have to be briefed because there are  
22 law firms representing the victim company, if you will, who are  
23 litigating privilege issues. So Judge Matsumoto made it very  
24 clear when we set the trial date that she would not change it,  
25 and really is insistent on it because she has carved this in

1 stone and made us pretty much affirm under oath that we would  
2 not ask for an adjournment, so I can't do it.

3 THE COURT: What is the date of that trial?

4 MR. BRAFMAN: The date of that trial is June -- I  
5 don't have my book. It's either June 23rd or June 26th, but  
6 the Court has set several dates in June for pretrial hearings  
7 on motions in limine, on evidentiary issues, there may be a  
8 hearing on the severance that may be happening before that.  
9 But we were just in court last week litigating a substantial  
10 privilege issue, and the Court ruled in our favor, that's the  
11 good news, the bad new is they just gave us hundreds of  
12 thousands of documents that we need to go through now, so I've  
13 got my hands full. When I took that case -- I mean, when I  
14 agreed to that date, your Honor, our firm trial date in this  
15 case was January, so I wasn't playing fast and loose with the  
16 court. I wouldn't do that.

17 THE COURT: No, I know.

18 MR. BRAFMAN: If I started the case in May, and even  
19 if your Honor agreed to let me carve out a week to go to -- a  
20 weekend, or long weekend, go back and forth to Israel, my  
21 problem is, I have hearings, and I'm not certain this case  
22 could be -- our case, meaning the Zarrab case -- can be  
23 finished in three or four weeks as we predict. It's hard for  
24 me to predict the length of the trial.

25 THE COURT: When is the --

1                   MR. BRAFMAN: I'll confer with the government and look  
2 to see if there's any way that this can work and get back to  
3 your Honor, but my hope is we could wait until after the first  
4 of the year and then write to the Court about if we have a  
5 scheduling issue that may work.

6                   THE COURT: No. I need to accelerate that.

7                   MR. KAMARAJU: Your Honor, obviously, the government  
8 would be happy to confer with defense counsel. The one  
9 question we have is whether the Court's calendar would permit a  
10 trial in April so that we could discuss that with Mr. Brafman,  
11 as well.

12                  THE COURT: You've got holidays. You've got the  
13 Easter holiday and the Passover holiday --

14                  MR. BRAFMAN: Passover holiday.

15                  THE COURT: -- in April. This will be part of your  
16 discussion. I know, because I've asked, I know you'll give it  
17 really your best effort.

18                  Ben, when is the bar mitzvah?

19                  MR. BRAFMAN: It's in late May and early June. It's  
20 over a weekend. I don't know the exact date as we speak, but I  
21 know that I have a firm date for the first weekend of June, and  
22 I have to leave before that to make it there.

23                  THE COURT: I certainly would --

24                  MR. BRAFMAN: Judge, I appreciate that. But if this  
25 case starts in May, it's not just that that's going to be a

1 difficulty, it's inconceivable to me that I'm able to do the  
2 meetings and hearings and conferences that Judge Matsumoto is  
3 going to require to have the trial start on time, and we're  
4 still six, seven, eight months away, where I note the new  
5 discovery is going to present additional consult issues that  
6 have to be sorted out. We had a conference last week that  
7 lasted several hours and resulted in the Court issuing an order  
8 that five or six different law firms now need to respond to, so  
9 it's not an easy case to prepare for.

10 THE COURT: I get it. You'll do the best you can  
11 meeting and conferring, but here's the problem. I need to  
12 really know from you next week, I can't wait until after the  
13 first of the year.

14 MR. BRAFMAN: Okay.

15 THE COURT: I just can't.

16 MR. BRAFMAN: We can confer. But let me ask you this,  
17 Judge. To the extent that it can't be done in October because  
18 of the Court's issue, I can discuss with Mr. Zarrab today  
19 whether he would object to an adjournment until either November  
20 or December, or even into January and, given his remand status  
21 and the amount of travel that we anticipate, I think he would  
22 agree to that.

23 THE COURT: No. He might, but that would not be  
24 acceptable to me. What I need to do is get your case and at  
25 least one other case tried in the timeframe that includes your

1 October 16 date. I don't want to --

2 MR. BRAFMAN: May I ask if the October 16th date for  
3 the other case involves a defendant who is on bail?

4 THE COURT: It's a defendant who is not on bail.

5 Trust me, I'm not throwing it out lightly. I'm going to  
6 reconcile the trial dates, but I need some flexibility from you  
7 all to be able to do that.

8 MR. BRAFMAN: We'll talk to the government next week,  
9 Judge, or early next week, and then write either a joint letter  
10 or I'll write the letter telling you what we're up to.

11 THE COURT: Where I'm at is that I can't and won't go  
12 beyond October 16 for your case. That's number one. Number  
13 two is, I have to get another case tried before your case, or  
14 another case tried before that timeframe. You know what I'm  
15 saying? I need a May/June trial -- or maybe July, go into some  
16 part of July, that would work for me, too -- and I need the  
17 October slot, so to speak.

18 MR. BRAFMAN: I don't think anybody wants to do this  
19 in August, but is the Court available in August if we need to  
20 try it in August as an option?

21 THE COURT: It's my least favorite option. That's the  
22 one time of the year that I take some time off.

23 MR. BRAFMAN: I understand. That's why I'm asking.

24 THE COURT: So I would prefer not, but the problem is  
25 so pressing that I might have to change that for this

1 circumstance. It's my very least favorite option.

2 MR. BRAFMAN: I understand, sir. We'll do our best, I  
3 promise.

4 THE COURT: Great. Thank you.

5 MR. BRAFMAN: Thank you.

6 MR. KAMARAJU: Thank you, your Honor.

7 (Adjourned)

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